

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:12-CV-00023-F

PHILLIP J. SINGER, Individually and on  
Behalf of All Other Persons Similarly  
Situating,

Plaintiff,

v.

TRANS1, INC., KENNETH REALI,  
JOSEPH P. SLATTERY, RICHARD  
RANDALL, and MICHAEL  
LUETKEMEYER,

Defendants.

**ORDER**

This matter is before the court on the plaintiff's Motion for Entry of Final Judgment Pursuant to Rule 54(b) as to the Individual Defendants [DE-76] and Motion to Lift Stay [DE-84]. For the reasons set forth below, the Motion for Entry of Final Judgment Pursuant to Rule 54(b) as to the Individual Defendants [DE-76] is DENIED, and the Motion to Lift Stay [DE-84] is DISMISSED AS MOOT.

On May 5, 2014, the plaintiff filed his Second Amended Complaint [DE-55]. On July 3, 2014, the defendants moved to dismiss the Second Amended Complaint. *See* Motion to Dismiss Plaintiff's Second Amended Class Action Complaint [DE-63]. However, before the court ruled on the motion to dismiss, Defendant Trans1 filed for bankruptcy, and the case was automatically stayed as to Trans1 alone. *See* Notice of Bankruptcy Filing and Automatic Stay [DE-68]. The court later allowed the motion to dismiss as to the remaining individual defendants. *See* Order of May 14, 2015 [DE-72]. The plaintiff moved for entry of final judgment several weeks later, *see* Motion for Entry of Final Judgment Pursuant to Rule 54(b) as to the Individual Defendants [DE-

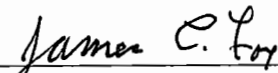
76], but that motion was made was shortly before the bankruptcy proceedings necessitating the automatic stay were to end. *See* Notice of Lifting of Automatic Bankruptcy Stay [DE-83] (filed on August 13, 2015). The automatic stay was lifted as of August 10, 2015. *See id.*

Because the automatic stay has already been lifted, the Motion to Lift Stay [DE-84] is DISMISSED AS MOOT. Additionally, while the court understands the plaintiff's desire for final judgment to be entered as to the individual defendants, the court believes such action to be neither prudent nor necessary. At the time the plaintiff moved for entry of final judgment, the bankruptcy proceedings were close to ending and have indeed now ended. Furthermore, the court wishes to avoid potential duplicative appeals. For those reasons, the plaintiff's Motion for Entry of Final Judgment Pursuant to Rule 54(b) as to the Individual Defendants [DE-76] is DENIED.

Because the automatic stay has been lifted, the court will consider the Motion to Dismiss Plaintiff's Second Amended Class Action Complaint [DE-63] as it relates to Defendant Trans1. However, the parties are DIRECTED to confer and to jointly file a status report informing the court of whether they wish to file supplemental briefing for the motion. The parties are directed to file their joint status report by 12:00 PM on October 16, 2015.

For the reasons stated herein, the Motion to Lift Stay [DE-84] is DISMISSED AS MOOT; the Motion for Entry of Final Judgment Pursuant to Rule 54(b) as to the Individual Defendants [DE-76] is DENIED; and the parties are DIRECTED to jointly file a status report—by 12:00 PM on October 16, 2015—informing the court of whether they wish to file supplemental briefing.

SO ORDERED. This, the 17 day of October, 2015.

  
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JAMES C. FOX  
Senior United States District Judge